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## TELECOMMUNICATIONS ORDER, 2001

### CODE OF PRACTICE FOR COMPETITION LAW IN THE TELECOMMUNICATIONS SECTOR (COMPETITION LAW CODE)

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# TELECOMMUNICATIONS ORDER, 2001

## CODE OF PRACTICE FOR COMPETITION LAW IN THE TELECOMMUNICATIONS SECTOR (COMPETITION LAW CODE)

In exercise of the powers conferred by Section 26(1) of the Telecommunications Order 2001, the Authority for Info-communications Technology Industry of Brunei Darussalam (“Authority”) hereby issues the following Code of Practice for Competition Law in the Telecommunications Sector (“Competition Law Code”):

### 1 PRELIMINARY

#### 1.1 Citation and commencement

The Competition Law Code may be cited as the Code of Practice for Competition Law in the Telecommunications Sector (“Competition Law Code”). The Competition Law Code shall commence on a date to be appointed by the Authority.

#### 1.2 Purpose of the Competition Law Code

The Competition Law Code is intended to promote the long-term interests of End Users of Telecommunications Services in Brunei Darussalam by promoting effective and sustainable competition in telecommunications sector. The Authority shall endeavour to achieve this goal by exercising its powers and duties under the Competition Law Code.

#### 1.3 Definitions

The terms in the Competition Law Code shall have the same meaning as defined in the Telecommunications Code. In addition, unless the context otherwise requires –

1.3.1 An “**Affiliate**” of a Market Player means an entity:

1.3.1.1 That holds an interest in any Market Player, party or Acquiring Party of five (5) per cent or more (parent);

1.3.1.2 In which a Market Player, party or Acquiring Party holds an interest of five (5) per cent or more (subsidiary); or

1.3.1.3 In which any parent of the Market Player, party or Acquiring Party holds an interest of five (5) per cent or more (sibling), provided that a Market Player will not be deemed an Affiliate of another Market Player based solely on the fact that both Market Players’ ultimate parent only has a passive ownership interest without Control in both Market Players.

1.3.2 “**Acquiring Party**” means any party, whether alone or together with its associates, that acquires equity interest or voting power in a Market Player.

1.3.3 “**Agreement**” refers to an explicit or implicit agreement, arrangement, understanding

or undertaking between Market Players based on a concurrence of wills, irrespective of its form including any informal collusive or concerted practices between such undertakings.

- 1.3.4 **“Competition”** in this code means effective and sustainable competition between **Market Players**.
- 1.3.5 **“Competition Law Code”** means the Code of Practice for Competition Law in the Telecommunications Sector as set out in Section 1.1 above.
- 1.3.6 **“Consolidation”** means acquiring, buying control or a controlling interest in or merging with, any material business of a Market Player as a going concern.
- 1.3.7 **“Control”** refers to direct or indirect control over the decision making of a Market Player. The Authority would look at whether decisive influence is or can be exercised over the Market Player. Factors which the Authority will consider may include, but is not limited to:
  - 1.3.7.1 Whether the controlling Market Player has ownership of more than fifty (50) per cent of the other Market Player’s voting rights;
  - 1.3.7.2 Whether the controlling Market Player has control over the decisions made or resolutions passed by the board of directors of the other Market Player;
  - 1.3.7.3 Veto rights over strategic decisions such as those involving the budget or material business plans of the Market Player;
  - 1.3.7.4 Powers to make certain key decisions such as those involving the budget or material business plans;
  - 1.3.7.5 Powers to appoint certain key personnel such as directors and senior management; and
  - 1.3.7.6 Such other factors that the Authority deems fit and appropriate to ensure that the goals of the Competition Law Code as set out in Section 1.2 above are achieved.
- 1.3.8 **“Dominance”** or **“Dominant Position”** has the same meaning as Significant Market Power and means a situation in which one undertaking (“Single Dominance”) or two or more undertakings (“Joint or Collective Dominance”) enjoy a position of economic strength which enables it/them to behave to an appreciable extent independently of competitors, customers and ultimately of consumers in a market within Brunei Darussalam or elsewhere. For example a dominant market player might prevent

effective competition being maintained on a relevant<sup>1</sup> market by raising prices, restricting output or imposing unfair trading terms.

- 1.3.9 **“Market Share”** refers to the relative size of an undertaking in the relevant market, in terms of the proportion of total output, sales or capacity it accounts for. It is calculated as the percentage of the revenue, total sales or volume of products or services and in particular but without limitation, telecommunications infrastructure or services, out of the total revenues, sales or volume by all companies of a similar type of products, infrastructure or services. Market share is an important indicator for the existence of market power.

#### **1.4 Legal effect of the Competition Law Code**

- 1.4.1 All Market Players duly licensed in Brunei Darussalam or otherwise must comply with the applicable provisions of the Competition Law Code.
- 1.4.2 The obligations contained in the Competition Law Code are in addition to those contained in the Telecommunications Order, 2001, as well as any other regulations, licences, codes of practice or standard of performance, advisory guidelines or Directions issued by the Authority.
- 1.4.3 To the extent that any provision of the Competition Law Code is inconsistent with the provisions of the Telecommunications Order, 2001, the provisions of the Telecommunications Order, 2001 shall prevail.
- 1.4.4 To the extent that the Competition Law Code is inconsistent with the provision of any other codes of practice or standards of performance or licence terms and conditions issued by the Authority in relation to the same, whether currently in force or implemented in the future, the terms of the Competition Law Code shall prevail.
- 1.4.5 If any provision of this Competition Law Code is held to be unlawful, all other provisions will remain in full force and effect.

#### **1.5 Application of the Competition Law Code to Market Players**

Unless otherwise stated, the provisions of the Competition Law Code shall apply to all Market Players and such other undertakings or enterprises as the Authority may designate, given the impact in Brunei Darussalam. The Authority will apply the provisions of the Competition Law Code according to the regulatory principles specified in Section 1.6 of the Telecommunications Code.

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<sup>1</sup> In competition law the term ‘relevant’ market is a market in which a particular product or service is sold and is defined using competition law techniques for the purpose of applying competition law. It does **not** have the specific meaning attributed to the term ‘Relevant Market’ defined in the Telecommunications Code and used in the Market Review Guidelines to mean a market that is ‘susceptible to ex-ante regulation’, having met all three criteria of the three-criteria test.

## **1.6 Rule of construction**

The Authority will interpret the Competition Law Code in a manner that is consistent with the ordinary meaning of the terms used. In case of any ambiguity, the Authority will interpret the Competition Law Code in the manner most consistent with the goals and regulatory principles as set out in the Telecommunications Code.

## **2 DETERMINATION OF DOMINANCE AND DEFINITION OF MARKETS**

### **2.1 Determination of Dominance**

2.1.1 The process for determining whether a single Market Player enjoys Dominance or two or more Market Players enjoy Joint Dominance on any given relevant market, shall follow the same principles as those used for determining Significant Market Power as defined in the Market Review Guidelines or any similar guidelines issued by the Authority from time to time.

2.1.2 However, finding Single or Joint Dominance on any relevant market for the purposes of the Competition Law Code serves the purposes of investigating any past or present behaviour of any undertaking(s) with a view to prohibit and/or punish any abuse of dominance by the Authority and not to determine undertaking(s) enjoying Significant Market Power in order to impose appropriate regulatory remedies based on a forward-looking approach. Bearing in mind such difference in the purpose, the Authority will therefore rely on the procedures described in the Market Review Guidelines

### **2.2 Definition of relevant markets**

2.2.1 The process for defining a relevant market for purposes of application of competition law as described in the Competition Law Code will follow the same principles, and in particular use the same approach to defining the relevant product and geographic markets, as those defined in the Market Review Guidelines or any similar guidelines issued by the Authority from time to time.

2.2.2 However, as the market definition serves a purpose different from ex-ante regulation of Significant Market Power, the Authority will not be applying the three-criteria test at Step 2 (Identifying markets susceptible to ex-ante regulation) as described in the Market Review Guidelines. It is also not required to start the definition of any relevant market at the retail level as the relevant product markets may be at any point within the overall value chain, irrespective of the presence (or not) of other retail or wholesale markets below or above the defined market. Bearing in mind such difference in the purpose, the Authority will therefore rely on the procedures described in the Market Review Guidelines.

### **3 ABUSE OF DOMINANT POSITION**

#### **3.1 Introduction**

##### **3.1.1 Application**

All provisions in this Section apply to all Market Players.

##### **3.1.2 Overview**

Market Players must not act in a manner that can impede competition. Where this occurs, the Authority whether on its own motion, or as it deems fit upon a complaint received from an interested party, may initiate an enforcement action, pursuant to the procedures set out in Section 5.4 of the Telecommunications Code. This Section provides standards that the Authority will use to determine whether a Market Player has contravened the Competition Law Code by abusing its dominance or by using unfair methods of competition.

#### **3.2 Abuse of Dominant position in Brunei Darussalam**

3.2.1 Any conduct, behaviour or practice on the part of one or more Market Players, which amounts to the abuse of a dominant position (whether Single or Joint Dominance) in any market within the telecommunications sector is prohibited.

3.2.2 Such abuse may in particular but without limitation consist in:

3.2.2.1 directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

3.2.2.2 limiting production, markets or technical development to the prejudice of consumers;

3.2.2.3 applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and

3.2.2.4 making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### **3.3 Examples of abuses**

The following examples of pricing and other types of abuses listed below illustrate typical cases involving conduct which will be considered by the Authority as an abuse of Dominance without prejudice to the generality of this clause.

### 3.3.1 Pricing abuses

A Market Player which is dominant in any market within the telecommunications sector must not abuse its dominant position in that market by pricing any product, infrastructure or services in a manner that is likely to unreasonably restrict competition. In particular, a Market Player must not engage in the following types of anti-competitive pricing:

#### 3.3.1.1 Predatory pricing

A Market Player that is dominant in any market within the telecommunications sector must not abuse its dominant position in that market by engaging in predatory pricing. The Authority will find that the dominant Market Player has engaged in predatory pricing and, therefore, has abused its dominant position, if:

- (a) The dominant Market Player is selling its products, infrastructure or services at a price that is less than the average incremental cost; and
- (b) The dominant Market Player's pricing is likely to drive efficient rivals from the market or deter future efficient rivals from entering the market; and
- (c) Entry barriers are so significant that, after driving rivals from the market or deterring entry, the dominant Market Player could impose an increase in prices sufficient (in amount and duration) to enable the Market Player to recoup the full amount of the loss that it incurred during the period of price cutting.

#### 3.3.1.2 Margin squeeze

A Market Player that is dominant in any market within the telecommunications sector must not abuse its dominant position in that market by engaging in margin squeezing. The Authority will find that the dominant Market Player has engaged in margin squeezing if the dominant Market Player provides or operates any product, infrastructure or services that a downstream Market Player requires in order to provide any product, infrastructure or services, at a price that is so high that the downstream Market Player or its Affiliate could not profitably sell its products, infrastructure or services to its End Users or Customers if it were required to pass on to its End Users or Customers the full price of the products, infrastructure or services.

### 3.3.2 Other types of abuses



A Market Player that is dominant in any market within the telecommunications sector is also precluded from taking any other action that abuses its dominant position in that market. In particular, such dominant Market Player must not engage in the following practices:

#### **3.3.2.1 Cross-subsidisation**

A Market Player that is dominant in any market within the telecommunications sector must not abuse its dominant position in that market by engaging in cross-subsidisation. The Authority will find that the dominant Market Player has engaged in cross-subsidisation and, therefore, has abused its dominant position, if the dominant Market Player uses revenues from the provision of a product, infrastructure or services that is not subject to effective competition to cross-subsidise the price of any other product, infrastructure or services that the dominant Market Player is directly or indirectly, whether through an Affiliate or otherwise, also providing and which is subject to effective competition, where this would unreasonably restrict competition in any market within the telecommunications industry.

#### **3.3.2.2 Undue discrimination**

A dominant Market Player must not engage in any undue discrimination. The Authority will find that a dominant Market Player has engaged in undue discrimination, and therefore has abused its dominant position, if the dominant Market Player provides any Market Player including its Affiliate with access to products, infrastructure or services on prices, terms or conditions that are more favourable than the prices, terms and conditions on which the dominant Market Player provides access to those products, infrastructure or services to any other Market Player or End Users or Customers.

#### **3.3.2.3 Constructive refusal to deal**

A dominant Market Player must not engage in any type of a constructive refusal to deal. The Authority will find that a dominant Market Player has engaged in a constructive refusal to deal and, therefore, has abused its dominant position, if the dominant Market Player, for example, alters the physical or logical interfaces of its network or systems, imposes other obstacles for the use of its products, infrastructure or services including degrading their quality or other standards or failing to provide the necessary, correct or complete information, in a manner that imposes significant costs or causes significant difficulties to other Market Players relying on such inputs, absent a legitimate commercial, operational or technical justification.

#### 3.3.2.4 Refusal to supply or to give access

A dominant Market Player must not refuse to supply or give access to those products, infrastructure or services which are inevitable for other Market Players in order for them to offer their own products or services to their Customers. The Authority will find that the dominant Market Player has abused its dominant position, if the dominant Market Player refuses to supply or give access to such essential products, infrastructure or services, or supplies or gives access at unreasonably high price.

## 4 AGREEMENTS INVOLVING MARKET PLAYERS THAT UNREASONABLY RESTRICT COMPETITION

### 4.1 Introduction

#### 4.1.1 Application

All provisions in this Section 4 apply to all Market Players.

#### 4.1.2 Overview

Pursuant to the procedures in Section 5 of the Telecommunications Code, the Authority may take enforcement action as it deems appropriate whether on its own motion or pursuant to a complaint received from any interested party against any Market Player that enters into an agreement with another Market Player that has the object or effect of unreasonably restricting competition in any market within the telecommunications sector. While Market Players are subject to general duties as documented in the General Duties Code, certain types of agreements are so clearly anti-competitive that the Authority will determine that a Market Player that has entered into such an agreement has contravened the Competition Law Code, regardless of the actual effect of the agreement. This is because such agreements are deemed to unreasonably restrict competition. The Authority will assess whether other agreements contravene the Competition Law Code based on their likely competitive effect.

### 4.2 Determining the existence of an agreement

4.2.1 For the purposes of this Section, an agreement can be established in any of the following three (3) ways:

4.2.1.1 First, an agreement can be established through direct evidence of an express agreement, such as a signed document.

4.2.1.2 Second, an agreement can be established using circumstantial evidence that demonstrates the existence of an express agreement, whether formal or otherwise.

4.2.1.3 Finally, an agreement can be established through evidence showing tacit agreement. The Authority may find that there has been a tacit agreement if the Market Players have indirectly or directly shared price and output information, and that these devices have facilitated coordinated behaviour.

4.2.2 For the purposes of this Section, an arrangement between a Market Player and an Affiliate over which it can exercise effective control i.e., the ability to cause the Affiliate to take, or prevent the Affiliate from taking, a decision regarding the management and major operating decisions of the Affiliate, does not constitute an agreement. Nor does this Section restrict the ability of a Market Player to enter into an arrangement with another entity in which the second entity acts as a bona fide agent of the Market Player.

### **4.3 Agreements between Market Players providing competing infrastructure or services (Horizontal Agreements)**

The following provisions are applicable to Competing Market Players.

#### **4.3.1 General prohibition**

Competing Market Players are prohibited from entering into agreements that unreasonably restrict, or are likely to unreasonably restrict, competition in any market within the telecommunications sector.

#### **4.3.2 Specific prohibited agreements**

The following types of agreements between or amongst Competing Market Players are deemed to unreasonably restrict competition and are specifically prohibited.

##### **4.3.2.1 Price fixing**

Competing Market Players must not enter into agreements to fix prices, regardless of the extent to which the Market Players agree to fix prices.

##### **4.3.2.2 Output restrictions**

Competing Market Players must not enter into agreements to restrict output, regardless of the extent to which the Market Players agree to restrict output.

#### **4.3.2.3 Bid rigging**

Competing Market Players must not enter into agreements to co-ordinate separate bids for assets, resources or rights auctioned by the Authority or any other entity whether in the private or public sector in Brunei Darussalam, or for any input into the Market Players' products, infrastructure or services for the operation or provision by the Market Player of any products, infrastructure or services, regardless of the price levels to which the Market Players agree.

#### **4.3.2.4 Market and customer divisions**

Competing Market Players must not enter into agreements not to compete to provide any products, infrastructure or services within the telecommunications sector to specific End Users or Customers or not to compete in specific areas, regardless of the terms and conditions on which the Market Players agree.

#### **4.3.2.5 Group boycotts**

Competing Market Players must not agree to refuse to do business with a specific supplier, Competing Market Player, End User or Customer.

#### **4.3.3 Agreements necessary for legitimate collaborative ventures**

Nothing in Sections 4.3.2.1 to 4.3.2.5 of the Competition Law Code prohibits agreements amongst Competing Market Players that are ancillary to efficiency-enhancing integration of economic activity, where such agreements are no broader than necessary to achieve the pro-competitive benefit. For example, if Market Players establish a joint purchasing or production venture designed to increase total output and lower prices, the permissibility of an agreement between the two Market Players regarding the prices to be paid or charged by the joint venture would be assessed, pursuant to Section 4.4 of the Competition Law Code, based on its likely or actual competitive effect.

#### **4.4 Agreements between Market Players and entities that are not directly Competing Market Players (non-horizontal agreements)**

The following provisions apply to agreements between a Market Player and other entities that are not directly competing Market Players, such as suppliers or distributors:

#### 4.4.1 **General prohibition**

Market Players are prohibited from entering into agreements with other entities that are not Competing Market Players, such as suppliers or distributors, which unreasonably restrict, or are likely to unreasonably restrict, competition in any market within the telecommunications sector in Brunei Darussalam.

#### 4.4.2 **Agreements that will be assessed based on competitive effect**

The permissibility of the following agreements will be based on their likely effect on competition, using the factors described in Section 4.5 below. As a general rule, the Authority will consider that non-horizontal agreements have no competitive effects when the combined market share of all the parties to the agreement is less than twenty-five per cent (25%) in their respective markets:

##### 4.4.2.1 **Resale price maintenance**

A Market Player must not agree with another Market Player as to the price that the second Market Player can charge End Users or Customers to which it resells the first Market Player's Infrastructure or Services, if the agreement unreasonably restricts, or is likely to unreasonably restrict, competition in any market within the telecommunications sector in Brunei Darussalam. The same applies to any agreements on minimum resale price or having the same price fixing effect.

##### 4.4.2.2 **Vertical market allocation**

A Market Player must not assign specific End Users or Customers to, or allocate specific markets amongst Market Players that resell its Infrastructure or Services where this unreasonably restricts, or is likely to unreasonably restrict, competition in any market within the telecommunications sector in Brunei Darussalam.

##### 4.4.2.3 **Exclusive dealing**

A Market Player must not enter into an agreement in which one entity agrees to:

- (a) Supply goods or services to; or
- (b) Purchase goods or services from; or
- (c) Distribute goods or services produced by;

the Market Player on an exclusive basis, where this unreasonably restricts, or is likely to unreasonably restrict, competition in any market within the telecommunications sector in Brunei Darussalam.

#### **4.5 Agreements between Competing Market Players will be assessed based on their actual or likely competitive effect**

Many agreements between Competing Market Players have the potential to increase inputs used by multiple Market Players. Examples include, but are not limited to, agreements to jointly market services or to jointly purchase inputs or to engage in joint research and development activities. If such agreements are challenged in an enforcement proceeding, the Authority will assess whether the agreements contravene the Competition Law Code based on their actual or likely effect on competition:

- (a) Where there is evidence that the agreement has actually unreasonably restricted competition, the Authority will find it to be in contravention of the Competition Law Code. This includes the types of agreements described in Sections 4.3.2.1 through 4.3.2.5 of the Competition Law Code. Such agreements may be excluded if there are sufficient efficiencies, to ensure that only agreements which are purely anti-competitive be subject to sanction.
- (b) Where there is no evidence of actual market effect because the agreement is relatively recent, the Authority will determine the permissibility of the agreement by seeking to assess whether it is likely to unreasonably restrict competition. In conducting this assessment, the Authority will consider the following factors:

##### **4.5.1 The Market Share of the parties**

The Authority will generally exempt agreements between Competing Market Players that do not have an aggregate Market Share of more than twenty per cent (20%) in the relevant market. This exemption does not apply to the agreements described in Sections 4.3.2.1 through 4.3.2.5 of the Competition Law Code.

##### **4.5.2 Commercial purpose of the agreement**

4.5.2.1 In reviewing an agreement, the Authority will make a preliminary assessment of its likely competitive impact i.e. the Authority will attempt to determine whether the agreement is likely to lead to a reduction in output or an increase in prices for the sale, access or interconnection with of services and telecommunication equipment. If the agreement is between or amongst a small number of Market Players without Significant Market Power, and the commercial purpose of the agreement is shown to be to increase output and reduce prices, the Authority will generally conclude, without conducting any further analysis, that the agreement does not contravene this Section of the Competition Law Code.

4.5.2.2 With regard to the types of agreements described in Sections 4.3.2.1 through 4.3.2.5 of the Competition Law Code, the Authority will take the view that the purpose of such agreements is to unreasonably restrict competition.

### 4.5.3 Likelihood of competitive harm

4.5.3.1 Where an agreement involves a more significant number of Market Players without Significant Market Power, or a Market Player with Significant Market Power, or where an agreement has the potential to result in higher prices or reductions in the output of infrastructure or services within the telecommunications market in Brunei Darussalam, the Authority will conduct a more detailed assessment. In particular, the Authority will consider the following factors:

- (a) Whether (and, if so, to what extent) the Market Players retain the ability to act independently of the agreed-upon venture;
- (b) The duration of the agreement;
- (c) Whether, in the event the Market Players acted anti-competitively, new entry into the market would be likely, sufficient and timely enough to deter or counter-act any competitive harm; and
- (d) Any other factors that help predict the likely competitive effect of the agreement.

4.5.3.2 If, after assessing these factors, the Authority concludes that the agreement poses no risk of competitive harm, the Authority will conclude that the agreement does not contravene the Competition Law Code. With regard to the types of agreements described in Sections 4.3.2.1 through 4.3.2.5 of the Competition Law Code, the Authority will take the view that such agreements will likely result in competitive harm.

### 4.5.4 Efficiencies

If the Authority's review demonstrates that the agreement has the potential to result in a reduction in output or an increase in prices of products, infrastructure or services, the Authority will consider whether the agreement is necessary to achieve efficiencies, which are likely to be passed on to End Users and/or Customers. Such efficiencies could include reductions in the cost of operating, developing, producing, marketing or delivering any telecommunications infrastructure or services. If such efficiencies offset the potential anti-competitive effect, and could not reasonably be achieved through measures that reduce competition to a lesser extent, the Authority will conclude that the agreement does not contravene the Competition Law Code. If such efficiencies do not offset the potential anticompetitive effect, or could not reasonably be achieved through measures that reduce competition to a lesser extent, the Authority will conclude that the agreement contravenes the Competition Law Code. With regard to the types of agreements described in Sections 4.3.2.1 through

4.3.2.5 of the Competition Law Code, the Authority will still consider whether there are sufficient efficiencies to offset the anti-competitive effect.

## **5 MERGERS, CHANGES IN OWNERSHIP OR CONTROL, OR CONSOLIDATIONS INVOLVING MARKET PLAYERS**

### **5.1 Introduction**

#### **5.1.1 Application**

All provisions in this Section apply to all Market Players.

#### **5.1.2 Overview**

The Authority will review agreements entered into by Market Players that result in mergers, changes in ownership or Control, or Consolidations. Pursuant to the procedures in Section 5.4 of the Telecommunications Code, the Authority may take enforcement action (on its own motion or pursuant to a request from an interested party) against any Market Player that enters into an agreement with another Market Player that results in mergers, changes in ownership or Control, or Consolidations if the said merger, change in ownership or Control, or Consolidation would result in a substantial lessening of competition in any defined market in Brunei Darussalam.

#### **5.1.3 Substantial lessening of competition**

In determining whether a merger, change in ownership or Control, or Consolidation would result in a substantial lessening of competition, the Authority may look at the following factors:

- 5.1.3.1 The Market Shares of the Market Players before and after the merger or consolidation;
- 5.1.3.2 The imminent entry and exit of the market of a Market Player;
- 5.1.3.3 The possibility of increased coordinated behaviour in the market; or
- 5.1.3.4 Changes in the regulatory structure of the market, such as market liberalisation.

### **5.2 Notification of mergers, changes in ownership or Control, or Consolidations involving Market Players**

Any proposed merger, change in ownership or Control, or Consolidation involving Market Players must in any event comply with the specific terms and conditions as contained in the conditions issued by the Authority, following its review, and be notified to the Authority.



### 5.2.1 **Approval of the Authority required**

The Authority must give its approval to the proposed merger, change in ownership or Control, or Consolidation before the Market Players can conclude their proposed merger, change in ownership or Control, or Consolidation. The Authority will deny a request for approval if it determines that the proposed merger, change in ownership or Control, or Consolidation is likely to result in a substantial lessening of competition.

### 5.2.2 **Failure to seek the Authority's approval**

Pursuant to the procedures in Section 5 of the Telecommunications Code, the Authority may take enforcement action (on its own motion or pursuant to a request from a private party) against such Market Players that enters into a merger, change in ownership or Control, or Consolidation without first seeking the Authority's approval. This may include ordering the merger, change in ownership or Control, or Consolidation to be undone. Failure on the part of the Market Player to seek the Authority's approval would be deemed a contravention of the Competition Law Code and may lead to a penalty under Section 5.6 of the Telecommunications Code.

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